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OGC HAS REVIEWED.

17 April 1951

MEMORANDUM FOR: THE FILES

SUBJECT: Taxes - Entertainment Deductions for Government Employees.

1. In the course of a recent conversation with Mr. Sugarman, Special Assistant to the General Counsel of the Bureau of Internal Revenue, I indicated it was my understanding that the matter of deduction for entertainment expenses for Government employees had been submitted to his office. Mr. Sugarman could not locate the particular case, but indicated that the question had been considered before.

2. In the following cases, expenses of entertainment were accepted as deductions against Federal income tax even though such expenses were not reimbursable to the Federal employee:

a. Edwin T. Bollock, 10 BTA 1297 (This was an American Naval officer acting as the Governor of American Samoa, entertaining various foreign officials in the course of his duties)

b. John J. Ide 43 BTA 799 (This was a European agent of the National Advisory Committee for Aeronautics, entertaining foreign officials)

c. Edwin R. Motch, Jr. 11 Tax Court 777, reversed 180 Fed (2d) 859 (I.T. 4012 Cumulative Bulletin 1950-1 p.33). (This was apparently an Army procurement officer entertaining various purchasers. While the deduction was not first allowed, it was reversed on the basis that a general denial of this deduction, regardless of the facts, was too broad. The Circuit Court applied the more logical criteria of "ordinary and necessary.")

d. Howard Veit Tax Court Opinion Oct. 11, 1949 (Assistant Chief of the Purchasing Board of Economic Warfare).

3. In the following cases the deduction was not allowed on the basis that there was no relationship between the entertainment and the work in which the employee was engaged:

a. Donald B. McCruden, ^{memo} BTA/Feb. 7, 1938 (Employee engaged in drafting regulations for the SEC)

b. J. Warner Pyles, Tax Court Memo January 30, 1950 (No details of employment).

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4. Mr. Sugarman thought that the deduction might possibly be acceptable if it was accompanied by an indication from the head of the Agency that the type of entertainment for which the deduction was claimed was undertaken with the knowledge and approval of the Agency and that it was necessary to the performance of the employee's duties. (This approach, of course, is not applicable to covert personnel where identification with the Agency must be concealed). In all events it would seem that the most logical solution would be Agency recognition of the expenses as properly reimbursable. The expense would then fall within the general rule, and if payment was not made to the individual by the Agency, the deduction could be taken on the income tax without particular consideration of the nature of the expense.

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